

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Squad #5	CCRB Case #: 201503550	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/29/2015 9:30 PM	Location of Incident: West 51st Street and 8th Avenue	Precinct: 18	18 Mo. SOL 10/29/2016	EO SOL 10/29/2016	
Date/Time CV Reported Tue, 05/05/2015 2:17 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/05/2015 2:17 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Larry Simpson	16699	952243	PBMS TF
2. POM Vahagn Krmoyan	21142	949882	007 PCT
3. POF Kelly Hughes	06507	948483	007 PCT
4. SGT Paul Taunton	02629	924540	PBMS
5. CPT Kevin Taylor	00000	917183	SOD SRG
6. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vince Wu	27185	946401	007 PCT
2. POM Tyler Hendrick	02811	944645	006 PCT
3. POM Daniel Clark	06118	940010	006 PCT
4. POM Matthew Moon	22963	953133	006 PCT
5. POM Joseph Gallagher	04910	943267	006 PCT
6. POM Daniel Koski	11927	949179	006 PCT
7. SGT Peter Chambertides	04701	903599	006 PCT
8. LT Sam Zheng	00000	937790	007 PCT
9. POM Vincent Gallo	19958	904864	PBMS
10. POM James Stewart	24710	929216	PBMS
11. POM Marcus Jenkins	00849	936813	PBMS
12. POM Angelo Velez	05511	941253	PBMS
13. POM Steven Schilling	29601	951220	PBMS
14. POM Stephen Oleary	06298	952066	PBMS
15. LT Salvatore Accardi	00000	918673	PBMS

Officer(s)	Allegation	Investigator Recommendation
A.SGT Paul Taunton	Force: Sergeant Paul Taunton struck § 87(2)(b) with a scooter.	
B.CPT Kevin Taylor	Force: Captain Kevin Taylor used physical force against § 87(2)(b)	
C.POF Kelly Hughes	Force: Police Officer Kelly Hughes used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
D.SGT Paul Taunton	Force: Sergeant Paul Taunton used physical force against § 87(2)(b)	
E.POM Larry Simpson	Force: Police Officer Larry Simpson used physical force against § 87(2)(b)	
F. An officer	Force: An officer used physical force against § 87(2)(b)	
G.POM Vahagn Krmoyan	Force: Police Officer Vahagn Krmoyan used physical force against § 87(2)(b)	
H. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	
§ 87(4-b), § 87(2)(g)		

### Case Summary

This incident occurred during a demonstration on April 29, 2015, in response to the death of an individual in police custody in Baltimore. Media coverage of the demonstrations noted that over 100 individuals were arrested (BR01). § 87(2)(g)

§ 87(2)(b) This case was not closed within 90 days because of the failure of TARU to respond to request for video footage in a timely manner and the difficulty encountered in scheduling two of the subject officers involved in the case.

At approximately 9:30 p.m. on April 29, 2015, § 87(2)(b) was part of a group of demonstrators who were walking south on 8<sup>th</sup> Avenue towards West 51<sup>st</sup> Street in Manhattan. § 87(2)(b) along with other demonstrators, was walking in the street. Officers instructed the demonstrators to get on the sidewalk. § 87(2)(b) continued to walk in the street. § 87(2)(b) alleged that, as he continued walking down 8<sup>th</sup> Avenue, a police scooter, driven by an officer identified via the investigation as Sgt. Paul Taunton of Patrol Borough Manhattan South, drove up from behind him and stopped parallel to him, striking § 87(2)(b) on the left forearm with the right rearview mirror of the scooter (**Allegation A**). Sgt. Taunton instructed § 87(2)(b) to get on the sidewalk. § 87(2)(b) told Sgt. Taunton to stop bumping him with his scooter and continued walking down 8<sup>th</sup> Avenue. § 87(2)(b) alleged that this pattern repeated approximately six more times between West 52<sup>nd</sup> Street and West 51<sup>st</sup> Street: § 87(2)(b) would continue walking, and the scooter would drive alongside him and stop sharply, striking him in the arm with the rearview mirror (**within Allegation A**).

When § 87(2)(b) reached the northwest corner of the intersection of 8<sup>th</sup> Avenue and West 51<sup>st</sup> Street, the rearview mirror of the scooter struck him for the last time. § 87(2)(b) turned to face Sgt. Taunton, balled his fists, and said, "Stop bumping me with your scooter, because if you don't, I have the right to knock you off of it." At this point, Captain Kevin Taylor of Special Operations Division-Strategic Response Group allegedly grabbed the back of § 87(2)(b)'s neck (**Allegation B**) and instructed officers to arrest him. Captain Taylor's hand was on the back of § 87(2)(b)'s neck for approximately 30 seconds and did not restrict his breathing. Captain Taylor attempted to pull § 87(2)(b) to the ground and was quickly joined in the struggle by several other officers, including Sgt. Taunton, PO Kelly Hughes and PO Vahagn Krmoyan of the 7<sup>th</sup> Precinct, and PO Larry Simpson of Patrol Borough Manhattan South Task-Force, who assisted him in taking § 87(2)(b) to the ground and attempting to handcuff him (**within Allegation B and Allegations C, D, E, F, and G**). During the struggle on the ground an unidentified officer allegedly punched § 87(2)(b) in the ribs (**within Allegation F**) and PO Krmoyan allegedly punched him in the face and pulled his hair (**within Allegation G**). Furthermore, an unidentified officer placed what § 87(2)(b) believed to be his or her foot on § 87(2)(b)'s back, contributing, in combination with his asthma and the other force being used against him at the same time by the other officers, to the restriction of his breathing (**Allegation H**). At some point in the struggle, § 87(2)(b) was unsure when, his glasses came off. PO Hughes failed to make a memo book entry in regards to this incident (**Allegation I**). § 87(2)(b) was arrested and charged with § 87(2)(b) (BR02).

This incident occurred at an intersection with a TARU camera. On May 6, 2015, the day after the CCRB received § 87(2)(b)'s complaint, a request was made via IAB to TARU to obtain video

footage from the camera. On June 17, 2015, the CCRB contacted the IAB liaison in regards to this request. A response to the request was received on July 1, 2015, with a note stating that the footage had been deleted and stamped indicating that TARU had not processed the request until June 18, 2015, the day after the CCRB contacted the IAB liaison about the overdue request (BR02).

Video footage of the vicinity of the incident location was obtained from the Hampton Inn Hotel located on 8<sup>th</sup> Avenue between West 51<sup>st</sup> Street and West 52<sup>nd</sup> Street (BR04 – BR05). The footage showed the demonstrators and officers approaching the intersection of West 51<sup>st</sup> Street and 8<sup>th</sup> Avenue but did not show the intersection itself or any portion of the arrest of § 87(2)(b).

### **Mediation, Civil and Criminal Histories**

As per the Comptroller's Office, as of October 16, 2015, no Notice of Claim had been filed in regards to this incident (BR06). As a result of § 87(2)(b)'s arrest, this complaint was deemed unsuitable for mediation. As of August 31, 2015, the court case stemming from § 87(2)(b)'s arrest was open, with his next court date scheduled for § 87(2)(b) (BR07). However, subsequently, as of October 19, 2015, the case no longer appears in Office of Court Administration records (BR08). § 87(2)(b) (BR07).

### **Civilian and Officer CCRB Histories**

- This is the first CCRB case involving § 87(2)(b) (BR09).
- Captain Taylor has been a member of the NYPD for 19 years and this is the first CCRB complaint against him.
- Sgt. Taunton has been a member of the NYPD for 16 years and has had two previous CCRB allegations in one case with no substantiated allegations. § 87(2)(g)
- PO Simpson has been a member of the NYPD for three years and has had three previous CCRB allegations in three cases with no substantiated allegations. § 87(2)(g)
- PO Krmoyan has been a member of the NYPD for four years and has had three previous CCRB allegations in three cases with no substantiated allegations. § 87(2)(g)
- PO Hughes has been a member of the NYPD for five years and has had two previous CCRB allegations in two cases with no substantiated allegations. § 87(2)(g)

### **Potential Issues**

§ 87(2)(b) did not know any of the other individuals who were involved in the demonstrations or were in the vicinity at the time of his arrest. He recalled having seen an individual who was in the vicinity of his arrest, though not under arrest at the time, later in the holding cell at 1 Police Plaza. No subsequent arrests were found in the vicinity of § 87(2)(b)'s arrest (BR10) and, given the large number of people arrested during the demonstrations, the investigation was unable to identify this individual.

A security guard employed at the Hampton Inn Motel was identified via the video footage as

having possibly witnessed the incident. On May 20, 2015, the CCRB field team went to the hotel and spoke with the security guard, who identified himself as § 87(2)(b) § 87(2)(b) witnessed the general commotion surrounding the arrests on 8<sup>th</sup> Avenue but did not specifically recall § 87(2)(b)'s arrest.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

Sgt. Taunton acknowledged having been the officer who was involved in the argument with § 87(2)(b) and who rode alongside him on his scooter as they approached the intersection where § 87(2)(b) was arrested. This was affirmed by PO Simpson. An allegation of striking § 87(2)(b) with a vehicle was therefore pleaded against Sgt. Taunton.

Captain Taylor acknowledged having been the captain who grabbed § 87(2)(b) instructed other officers to arrest him, and took him to the ground. A physical force allegation was therefore pleaded against Captain Taylor.

§ 87(2)(b) could only describe two of the estimated eight officers whom he alleged were involved in the struggle to take him to the ground and handcuff him. The first was the scooter-riding officer who was identified as Sgt. Taunton. The other was a white male whose shield number § 87(2)(b) observed as "21142." This officer was identified as PO Krmoyan, whose shield number is 21142. Both Sgt. Taunton and PO Krmoyan, along with PO Simpson and PO Hughes, acknowledged having been involved in the struggle to handcuff § 87(2)(b). § 87(2)(b) alleged that an officer whom he could not see punched him in the ribs and an officer placed what he believed to be his or her foot on his back, contributing to the restriction of his breathing. The identified officers denied having taken either action or having observed another officer doing so. None of the identified officers could identify any other officers, aside from one another, who were involved in the struggle to handcuff § 87(2)(b). The full detail roster listed hundreds of officers from several commands assigned to the demonstration (BR11). Furthermore, given the fact that, by the time of § 87(2)(b)'s arrest, the officers had followed the group from the initial location at 14<sup>th</sup> Street to West 51<sup>st</sup> Street and 8<sup>th</sup> Avenue via the West Side Highway, the officer subgroups on the detail roster, as per the officers, were no longer organized and together. The investigation could therefore not identify the other officers who were possibly involved in the struggle or their assigned commands. § 87(2)(g)

§ 87(2)(b) alleged that the officer whose shield number he observed as "21142," matching that of PO Krmoyan, was the officer who punched him in the face and pulled his hair. PO Krmoyan denied having taken either action but acknowledged having been involved in the struggle to handcuff § 87(2)(b). § 87(2)(g)

### **Allegations not pleaded**

In his initial complaint § 87(2)(b) alleged that Captain Taylor "choked" him from behind. In his sworn statement, however, § 87(2)(b) explained that Captain Taylor grabbed and held the top of the back of his neck for approximately 30 seconds and that it did not restrict his breathing.

§ 87(2)(g)

§ 87(2)(b) did not know how or when his glasses came off his face or how it was damaged and did not allege that it was intentionally damaged by officers. § 87(2)(g)

## **Recommendations**

### **Allegation A – Force – Sgt. Paul Taunton struck § 87(2)(b) with a scooter.**

§ 87(2)(b) filed his initial complaint by phone on May 5, 2015, and provided a sworn statement on May 8, 2015. § 87(2)(b) provided a brief statement to the CCRB field team on May 20, 2015 (BR12). PO Simpson was interviewed on July 24, 2015; PO Krmoyan was interviewed on September 1, 2015; Sgt. Taunton was interviewed on September 4, 2015; PO Hughes was interviewed on September 15, 2015; and Captain Taylor was interviewed on September 22, 2015.

It is undisputed that § 87(2)(b) was walking in the street and continued to do so after he was repeatedly instructed to get on the sidewalk by Sgt. Taunton and other officers. § 87(2)(b) explained that, “There were a bunch of cars coming so I understand why they said that, there was a lot of traffic and we’re blocking traffic so a lot of us went to the sidewalk, but I happened to be curbside because I didn’t wanna wind up tripping over garbage or anything that’s over there.”

As per § 87(2)(b) as he continued walking down 8<sup>th</sup> Avenue, a police scooter driven by Sgt. Taunton drove up from behind him and stopped parallel to him, striking § 87(2)(b) on the left forearm with the right rearview mirror of the scooter. Sgt. Taunton instructed § 87(2)(b) to get on the sidewalk. § 87(2)(b) continued walking down 8<sup>th</sup> Avenue. § 87(2)(b) alleged that this pattern repeated approximately six more times between West 52<sup>nd</sup> Street and West 51<sup>st</sup> Street, over the course of approximately three minutes: § 87(2)(b) would continue walking, and the scooter would drive alongside him and stop sharply, striking him in the arm with the rearview mirror. § 87(2)(b) suffered no injuries as result of this.

The video footage obtained from the Hampton Inn Hotel (BR04 & BR05) shows a large group of individuals, some walking on the sidewalk and several walking in the street, passing by the hotel at approximately 9:37 p.m. (embedded below). Several police scooters are driving in the street, in the lane closest to the sidewalk, in the midst of the demonstrators who are walking in the street. The demonstrators on the street are seen walking and running between and around the scooters. Given the darkness on the street and the resolution of the footage, no specific individuals can be discerned and it cannot be determined whether any of the scooters appear to strike any of the demonstrators.



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§ 87(2)(b) did not see any officer strike any civilian with a scooter, though, as per the video footage, he may not have been present at the point that § 87(2)(b) alleged that he was struck by the scooter.

All of the interviewed officers denied having observed a scooter striking § 87(2)(b). As per Sgt. Taunton, when he instructed § 87(2)(b) to get out of the street and get back on the sidewalk, § 87(2)(b) became “very belligerent” and yelled and screamed at him, at one point stating that he § 87(2)(b) would kill Sgt. Taunton if he hit him with the scooter. Sgt. Taunton and § 87(2)(b) remained “a couple of feet” apart throughout their interactions at this stage and Sgt. Taunton denied that his scooter ever made contact with § 87(2)(b). As per PO Simpson, he observed Sgt. Taunton instruct § 87(2)(b) to get onto the sidewalk. § 87(2)(b) got “in [Sgt. Taunton’s] face,” “about nose to nose” with Sgt. Taunton, and said, “You know, if you touch me we’re fighting.” PO Simpson rode towards Sgt. Taunton and § 87(2)(b) but Sgt. Taunton instructed him to not worry and to go forward to deal with another group.

§ 87(2)(g)

#### **Allegation B – Force – Cpt. Kevin Taylor used physical force against § 87(2)(b)**

As per § 87(2)(b) when he reached the northwest corner of the intersection of 8<sup>th</sup> Avenue and West 51<sup>st</sup> Street, the rearview mirror of the scooter struck him for the last time. He turned to face Sgt. Taunton, balled his fists, and said, “Stop bumping me with your scooter, because if you don’t, I have the right to knock you off of it.” § 87(2)(b) then felt a hand grab the upper portion of the rear of his neck, above the headband of the headphones around his neck, and a voice say, “Arrest him.” § 87(2)(b) turned around and observed Captain Taylor. § 87(2)(b) stated that Captain Taylor’s hand was on the back of his neck for approximately 30 seconds and did not restrict his breathing. Several officers joined Captain Taylor, grabbing § 87(2)(b) and attempting to push, pull, and trip him to the ground. Aside from Sgt. Taunton, the rest of the officers came from behind § 87(2)(b) and he was unable to see them and was unsure where on his body the officers grabbed. § 87(2)(b) responded by “trying not to get put on the ground” by stiffening his body and trying to “shake” the officers off by moving his shoulders from side to side. No officer stuck § 87(2)(b) at this time. § 87(2)(b) remained on his feet for approximately 30 seconds before the officers “wrestled” him to the ground.

§ 87(2)(b) landed on the ground in a prone position with the front of his body and the left side of his head striking the ground and both of his hands underneath his body. § 87(2)(b) suffered an abrasion on the left side his forehead as a result of his head striking the ground at this point (At the time of his interview there was a healing scar on the left side of his forehead which he identified as the remnants of this abrasion) (BR13). § 87(2)(b) was taken to § 87(2)(b) on § 87(2)(b) (BR14 & Privileged Documents). On § 87(2)(b), he went to § 87(2)(b) (BR15 & Privileged Documents). He did not complain of the abrasion to his forehead at either location and it was not noted in the physical examinations conducted at either location.

As per Captain Taylor, when he first noticed § 87(2)(b) § 87(2)(b) was standing in the street on 8<sup>th</sup> Avenue, very close to an officer on a scooter, identified via the investigation as Sgt. Taunton. Due to the darkness, Captain Taylor could not determine whether any physical contact was being made between them. He could not recall whether he heard what was being said between them but believed that § 87(2)(b) was refusing to get back on the sidewalk. Captain Taylor grabbed § 87(2)(b)'s arm and forearm and instructed the officers in the vicinity to arrest § 87(2)(b). Captain Taylor explained that he took these actions due to § 87(2)(b)'s refusal to get on the sidewalk and the confrontation he was having with Sgt. Taunton and that he ordered his arrest because § 87(2)(b) was committing disorderly conduct by blocking vehicular traffic.

Approximately three to four other officers joined Captain Taylor and grabbed § 87(2)(b) § 87(2)(b). § 87(2)(b) "resisted" by stiffening his body and pushing it against the officers. At this point the officers pushed or pulled § 87(2)(b) to the ground. § 87(2)(b) landed on his stomach. Captain Taylor did not observe his head strike the ground during this initial fall or at any later point in the struggle. Captain Taylor stated that he may have grabbed the back of § 87(2)(b)'s shoulder, near the back of his neck, as they were taking him to the ground, but did not recall having grabbed § 87(2)(b)'s neck itself at any point in time. Once § 87(2)(b) was on the ground, Captain Taylor stepped away from the struggle.

Sgt. Taunton, PO Simpson, PO Krmoyan, and PO Hughes provided somewhat differing accounts of this incident, though all except PO Simpson specifically noted that they observed Captain Taylor physically engaged with § 87(2)(b) at the beginning of their observations of the physical interaction. All four denied having observed Captain Taylor or any other officer grab § 87(2)(b)'s neck.

According to Sgt. Taunton, about half-a-block and a "couple of minutes" after he first began interacting with § 87(2)(b) he turned his scooter away. When Sgt. Taunton next looked back toward § 87(2)(b) he observed him on the ground in a prone position beside him with Captain Taylor appearing to be attempting to arrest him. Sgt. Taunton did not see how § 87(2)(b) went from being upright to being on the ground. PO Krmoyan observed § 87(2)(b) struggling in the crosswalk of the intersection with Captain Taylor and Sgt. Taunton. They appeared to be attempting to grab § 87(2)(b)'s arms but § 87(2)(b) was pushing them back with his arms. PO Krmoyan grabbed one of § 87(2)(b)'s arms and attempted to bring it behind his back. § 87(2)(b) § 87(2)(b) pulled his arm away from PO Krmoyan and grabbed PO Krmoyan's legs. § 87(2)(b) then appeared to lose his footing and fell to his knees. § 87(2)(b) then went from the kneeling position into a prone position on his stomach on his own. PO Hughes observed Captain Taylor "grappling" or "wrestling" with § 87(2)(b) with Captain Taylor attempting to grab § 87(2)(b)'s forearms and § 87(2)(b) attempting to do the same to Captain Taylor. Captain Taylor and § 87(2)(b) then fell to the ground, as a natural result of the "grappling," and continued their struggle on the ground. Approximately 15 seconds after PO Simpson rode past § 87(2)(b) and Sgt. Taunton, he looked back and observed § 87(2)(b) standing directly in front of Sgt. Taunton's scooter, preventing him from moving forward. PO Simpson then observed several officers "converge" on § 87(2)(b) "Next thing you know, § 87(2)(b) just goes down and I just see a bunch of cops rush in."

It is undisputed that § 87(2)(b) refused repeated commands to get onto the sidewalk and that,



once Captain Taylor grabbed him to arrest him, he stiffening his body and tried to “shake” the officers off him by moving his shoulders from side to side. It is undisputed that Captain Taylor, joined by other officers, then wrestled § 87(2)(b) to the ground.

Penal Law Section 35.30 (BR16) and Patrol Guide Procedure 203-11 (BR17) hold that an officer is able to use physical force to overcome resistance in the course of effecting an arrest. A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, obstructs vehicular or pedestrian traffic. Penal Law Section 240.20, subsection 5 (BR16).

§ 87(2)(g)  
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**Allegation C – Force – PO Kelly Hughes used physical force against § 87(2)(b)**

**Allegation D – Force – Sgt. Paul Taunton used physical force against § 87(2)(b)**

**Allegation E – Force – PO Larry Simpson used physical force against § 87(2)(b)**

**Allegation F – Force – An officer used physical force against § 87(2)(b)**

**Allegation G – Force – PO Vahagn Krmoyan used physical force against § 87(2)(b)**

While on the ground, § 87(2)(b) felt several things occurring to him simultaneously: § 87(2)(b) felt an officer whom he could not see twisting his foot at the ankle for approximately 30 seconds; he felt an officer, whom he could not see, was twisting his arm; he felt an officer whom he could not see hit him at least twice in the ribs, at least once on each side; he saw an PO Krmoyan punch him twice on the left side of his face, approximately 20 seconds apart, while pulling his hair. PO Krmoyan was pulling § 87(2)(b)'s hair for approximately one minute.

According to § 87(2)(b) As these things occurred, § 87(2)(b) was screaming and yelling for the officers to get off him. The officers were able to first get § 87(2)(b)'s right arm from underneath his body by rolling him over onto his left side. He heard a voice shout that his § 87(2)(b)'s arm was trapped underneath his body. The officers then rolled him again and removed his left arm from underneath his body. § 87(2)(b) then pulled his left arm back beneath his body and held it against his chest. § 87(2)(b) stated that he did this so that the officers would not be able to handcuff him. After approximately 20 seconds the officers were able to pull it out again and cuff his hands together. § 87(2)(b) did not kick his legs at any point during the struggle. § 87(2)(b) felt pain in his shoulder and his ribs as a result of the force used against him during this portion of the incident. He reported the shoulder pain to the staff at § 87(2)(b) and the rib pain to the staff at § 87(2)(b). X-rays showed no fractures in regards to either pain site.

According to § 87(2)(b) approximately ten seconds after he was handcuffed, § 87(2)(b) was lifted to his feet. PO Krmoyan then grabbed § 87(2)(b)'s hair again for approximately 10 seconds. The day after the incident, § 87(2)(b)'s girlfriend pointed out to him that one of the locks of his dread-locked hair, at the center front of this head, was missing (BR18). § 87(2)(b)

did not know when his hair came out but believed that it occurred when PO Krmoyan pulled his hair during the arrest.

The officers § 87(2)(g) all consistently stated that § 87(2)(b) continued to resist once he was on the ground. According to Captain Taylor, § 87(2)(b) resisted by moving one arm back and forth and then holding his arms underneath his body. According to Sgt. Taunton, § 87(2)(b) resisted by holding his arms underneath his body and pulling them back in whenever officers managed to get them out. According to PO Simpson, PO Hughes, and PO Krmoyan, § 87(2)(b) resisted by kicking his legs, rolling from side to side, and holding his arms underneath his body. They all denied having punched § 87(2)(b) or having pulled his hair or having observed any officers do so.

As per Captain Taylor, once § 87(2)(b) was on the ground, he stepped away from the struggle but observed four remaining officers struggling on the ground to handcuff § 87(2)(b). After approximately one minute on the ground, Captain Taylor instructed the officers to get § 87(2)(b) to his feet. Captain Taylor gave this instruction because § 87(2)(b) appeared to have calmed down. As per PO Simpson, when he joined the struggle, PO Hughes was holding § 87(2)(b)'s right leg while PO Krmoyan and Sgt. Taunton were attempting to pull his arms out. PO Simpson grabbed § 87(2)(b)'s left leg and lifted it up from the ground to prevent him from kicking it. Less than a minute after PO Simpson joined the struggle, one of § 87(2)(b)'s arms came out from underneath his body. PO Simpson grabbed § 87(2)(b)'s wrist with one hand and locked his other arm around § 87(2)(b)'s elbow to "stabilize" his arm. At this point § 87(2)(b) stated that he had asthma, was having trouble breathing, and that he was done resisting. A voice then instructed the officers to stand him up.

As per Sgt. Taunton, once he observed § 87(2)(b) on the ground, he got off his scooter and went to assist the other officers by attempting to pull § 87(2)(b)'s right arm from underneath his chest and instructing him to release his arms. After approximately 10 minutes of struggling with him, the officers managed to bring § 87(2)(b)'s arms behind his body and handcuff him. As per PO Krmoyan, he knelt beside § 87(2)(b) and attempted to pull his arms out. After approximately five minutes of struggling with § 87(2)(b) stopped resisting, released his arms, and PO Krmoyan was able to grab them and bring them behind his back. As per PO Hughes, she went behind § 87(2)(b) and attempted to hold § 87(2)(b)'s legs on the ground to prevent them from kicking. This was not effective so she attempted to place her knee on his right leg to attempt to hold them down. She never attempted to twist his ankle or leg.

In summary, it is undisputed that § 87(2)(b) resisted the officers attempt to handcuff him by holding his arms underneath his body and pulling his arms back underneath his body when the officers managed to pull an arm out. It is also undisputed that § 87(2)(b)'s body rolled from side to side, though it remains in dispute whether he did this to prevent the officers from getting his arms or whether it was the officers rolling him from side to side. It remains disputed whether he kicked his legs during the struggle. It is undisputed that officers interacted extensively with § 87(2)(b)'s arms, attempting to pull them from underneath his body and bring them behind his back, and his leg, including attempting to lift one of them from the ground and placing a knee on one of them. It is disputed whether any officers punched § 87(2)(b) or pulled his hair.

Penal Law Section 35.30 (BR16) and Patrol Guide Procedure 203-11 (BR17) hold that an officer is able to use physical force to overcome resistance in the course of effecting an arrest. The Patrol Guide requires that, only the amount of force necessary to overcome resistance should be used to effect an arrest.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation H – Force – An officer restricted § 87(2)(b) s breathing.**

At some point in the struggle, § 87(2)(b) felt what he believed to be the foot of an officer whom he could not see on his back. As per § 87(2)(b) this action, in combination with his asthma and the other force being used against him at the same time by the other officers, restricted his breathing. § 87(2)(b) shouted that he had asthma, was about to faint, and could not breathe. After approximately 30 seconds on his back, § 87(2)(b) felt the foot lift from his back and he resumed his normal breathing pattern.

Captain Taylor, Sgt. Taunton, PO Hughes, PO Simpson, and PO Krmoyan all stated that they did not and did not observe an officer place his or her foot or knee on § 87(2)(b) s back. Captain Taylor, Sgt. Taunton, PO Hughes, and PO Krmoyan did not hear § 87(2)(b) state that he had asthma or was having difficulty breathing and never observed him appear to be having difficulty breathing. PO Simpson, however, stated that, at some point during the struggle, § 87(2)(b) stated that he had asthma, was having trouble breathing, and that he was finished resisting. After § 87(2)(b) stated this, PO Simpson heard a voice instructing the officers to stand him up, and they proceeded to lift § 87(2)(b) to his feet. Captain Taylor stated that he was the officer who ordered the officers to lift § 87(2)(b) from the ground. He stated that he did this when § 87(2)(b) appeared to stop resisting against the officers. He, however, never heard § 87(2)(b) state that he had asthma or was having difficulty breathing.

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

§ 87(4-b), § 87(2)(g)  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

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Squad: 5

Investigator: \_\_\_\_\_ Alexander Opoku-Agyemang November 6, 2015  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date